No. 83-831
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

LAWRENCE STUEBIG, a/k/a LAWRENCE STUEBIG, by his Guardian, MARIE CAROLE HECKMANN, 251 N. Bent Road, Wyncote, Pennsylvania, 19095

Petitioner

v.

BERNARD J. WILLIS, M.D., Acting Superintendent and Clinical Director of Farview State Hospital For the Criminally Insane, Waymart, Pa.

And

JOHN P. SHOVLIN, M.D., 20 Dendrick Lane, Carbondale, Pa.

And

JOHN M. FITZGERALD, Director of Social Services of Farview State Hospital for the Criminally Insane, Waymart, Pa.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the lower courts erred in finding that the institutionalized mentally ill had no clearly established right to treatment during the period preceding Petitioner's release from Farview State Hospital in 1975.

2. Whether the lower courts correctly held that Respondents had no malicious intention to violate Petitioner's rights and, that, in any case, the issue of malicious intention has no relevance to the question of good faith immunity under this Court's decision in Harlow v. Fitzgerald, 457 U.S. 800 (1982).

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STATEMENT

This is a civil rights action for damages, pursuant to 42 U.S.C. § 1983, in which plaintiff alleged that defendants,[1] who were officials at Farview State Hospital, violated his constitutional rights by neither releasing nor treating him during his stay at Farview.[2]

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[1] The defendants were John P. Shovlin, M.D., former Farview superintendent; Bernard J. Willis, M.D., former clinical director; John M. Fitzgerald, director of social services; Francis Truman, former supervisor of the guards; and, William H. Horan, M.D. and Phillip Powell, M.D., former members of the medical staff. Other defendants named in the complaint were dismissed voluntarily by plaintiff.

[2] Plaintiff also filed a malpractice action in state court arising out of the same facts. That action is still pending. Stuebig v. Hammel, 1596 C.D. 1976 (Pa. Commonwealth Court).

After a four day trial, the district court entered a judgment in favor of three of the defendants on the ground that they had not violated any of plaintiff's rights. The district court also held that although three other defendants, Shovlin, Willis and Fitzgerald, had violated Stuebig's constitutional rights, they were immune from liability for damages.[3] At this point, plaintiff challenges only the latter holding.

The evidence adduced at trial showed that, on January 15, 1941, Stuebig was arrested for burglarizing a railroad freight car. (Pet. App. 11). While Stuebig was in prison awaiting trial, he exhibited odd behavior and a

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[3] Subsequently the district court denied plaintiff's motions under Rules 50 and 59, F.R.C.P. requesting that it reconsider its judgment.

"lunacy commission," composed of two physicians and an attorney, was appointed to examine him. (Pet. App. 11). In its report, the commission found that Stuebig was insane and that he required care in a mental institution. (Pet. App. 11). As a result, it recommended that he be committed to a hospital for mental diseases.(Pet. App. 11). Acting on this recommendation, the Philadelphia County Court found Stuebig to be insane and ordered him committed to Farview "until further order of Court." (Pet. App. 12).[4]

During Stuebig's commitment, Farview had only one certified psychi-

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[4]This commitment procedure was authorized by Section 308 of the Act of July 11, 1923, P.L. 998 (formerly codified at Pa. Stat. Ann. tit. 50, § 48 (1936)).

atrist, Dr. Shovlin, whose time was occupied primarily with administrative duties. (Pet App. 25). Throughout that time, the professional staff consisted of an extremely small number of physicians, nurses and social workers. (Pet App. 19-21).

Dr. Shovlin initially worked at Farview as a ward physician from 1937 - 1941. After a stint in the service, he returned to Farview in 1946. In 1947, he was appointed assistant superintendent and was promoted to superintendent in 1949. (Pet. App. 16).

As superintendent, most of Shovlin's time was devoted to performance of administrative duties. These duties included formulating of institutional policy, preparing of the budget, coordinating of medical with administratrative functions, and dealing with the Department of Public Welfare. (Pet. App. 25).

Because of the weight of his administrative tasks, Dr. Shovlin was unable personally to ensure that all patients received necessary treatment. (Pet. App. 31).

Dr. Willis came to Farview in June of 1955. Willis began as a staff physician and, within three years, he was acting as the hospital's clinical direction. (Pet. App. 15). In addition to his duties as clinical director, Dr. Willis carried a direct patient load. (Pet. App. 26). Thus, although Willis was responsible for overseeing Farview's Farview's overall treatment program, he relied heavily upon the staff, most particularly the regular ward physicians, to make the day-to-day treatment decisions. (Pet. App. 31).

Dr. Willis also depended upon the staff evaluation system to identify candidates for release. (Pet. App. 29).

If any employee, professional or non-professional, noticed improvement in a patient's condition, the patient was scheduled for evaluation by the professional staff. (Pet. App. 29). If the staff concluded that release was appropriate, a suitable recommendation was made to the superintendent. (Pet. App. 29).

The essence of the district court's findings concerning Stuebig was that he was mentally ill throughout his stay at Farview (Pet. App. 39), but that, for the period 1955-1969, he should have been treated with psychoactive drugs. (Pet. App. 39). On the other hand, the Court did find that, prior to 1955, no effective treatment existed for Stuebig's disease and, after 1969, Stuebig's physical condition was such that administration of these powerful medications would

have been too risky. (Pet. App. 37, Pet. App. 39).

The district court acknowledged that the ward doctors bore immediate responsibility for treatment and care of the patients, including prescription of psychoactive drugs. (Pet. App. 48). The court also acknowledged that Drs. Shovlin and Willis had established a policy requiring the aggressive use of psychoactive drugs. (Pet. App. 28). Nevertheless, the court held that the failure of Shovlin and Willis to institute systematic procedures by which they could personally enforce that policy violated Stuebig's constitutional rights. (Pet. App. 63). With respect to Fitzgerald, the court held that, because he was responsible for reviewing patients' commitment status, he was responsible for Stuebig's not being released or eval-

uated between August of 1971 (when he began working at Farview) and 1975. (Pet. App. 63).[5]

Having found constitutional violations, the court went on to consider the issue of qualified immunity. The court found that even in "the later years of [Stuebig's commitment] the existence of a right to treatment was still a matter of scholarly debate" and that it was not until the decision in O'Connor v. Donaldson, 422 U.S. 563 (1975) that this Court first discussed the right to treatment. (Pet. App. 101). The district court found that defendants did not know and could not reasonably have been expected to know that Far-

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[5]The remaining defendants were found not to have participated in the constitutional violations. Nor were Shovlin or Willis held responsible for the failure to release Stuebig or Fitzgerald for the failure to treat him. Stuebig does not appear to contest those findings.

view's procedures violated Stuebig's constitutional rights.[6] (Pet. App. 66). Accordingly, the court held that Shovlin, Willis and Fitzgerald were entitled to immunity from liability for damages and entered judgment in their favor.

On appeal, the Third Circuit affirmed, finding, in a brief per curiam opinion, that the district court had correctly applied the law of immunity. (Pet. App. 108). Petitioner now seeks review of that decision.

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[6]In finding that defendants could not be expected to know of Stuebig's rights, the Court relied heavily on the testimony of defendant's expert Dr. Heller, a forensic psychiatrist, who testified at length concerning the state of the law and the understanding of mental health professionals concerning the law during the relevant time period. In so doing, the lower court described Dr. Heller as "an informative and generally disinterested witness who had substantial familiarity with conditions at Farview from 1960 ... through the 1970's." (Pet. App. 72).

REASONS FOR DENYING THE WRIT

THE LOWER COURT DECISION IS BOTH CORRECT AND UNREMARKABLE AND, THEREFORE, DOES NOT MERIT REVIEW BY THIS COURT

In asking this Court to review the decision of the Third Circuit, Petitioner asserts only that the lower court erred. However, mere err by the lower court has never been a sufficient ground upon which to base a Petition for Certiorari. See, Sup. Ct. R. 17. In any case, the decision below is both correct and unremarkable. Accordingly, the Petition in this case should be denied.

A. The Decision Below Correctly Applied The Qualified Immunity Defense, Finding That Plaintiff's Rights Were Not Clearly Established During The Relevant Time Periods.

The district court in this case found that even in "the later years of [plaintiff's commitment] the existence of a right to treatment was still a

matter of scholarly debate," and that it was not until the decision in O'Conner v. Donaldson, 422 U.S. 563 (1975)[7] that this Court first discussed the right to treatment. (Pet. App. 101). Based on that finding, the court found that there was no clearly established constitutional right to treatment for the institutionalized mentally ill during the relevant time period. (Pet. App. 103). The Third Circuit agreed. (Pet. App. 108).

While attacking this holding, petitioner fails to cite a single case finding, let alone clearly establishing, a constitutional right to treatment for the mentally ill. This failure speaks for itself: the lower

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[7]As is noted above, Stuebig was released from Farview in 1975.

court's holding that there were no such rights clearly established during the relevant time period is simply unassailable.[8]

Plaintiff's additional claim that his state law rights were clearly established is also clearly without merit. First, plaintiff again fails to cite any case law in support of the

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[8]Petitioner also appears to argue that defendants were acting in a ministerial rather than discretionary capacity with regard to him. This claim is frivolous. The district court's finding of liability was based on defendants' failure to review personally the treatment and condition of every patient at Farview State Hospital. However, as the lower court recognized, it could "hardly find that Dr. Shovlin or Dr. Willis wasted their time by devoting it to administering the facility as a whole in Dr.Shovlin's case and to operating the staff conference system in Dr. Willis' case." (Pet. App. 99). Certainly in making those difficult choices as to how to allocate their time as hospital administrators, defendants were exer-exercising discretionary functions. See, Youngberg v. Romeo, 457 U.S. 307 1982); O'Connor v. Donaldson, supra.

proposition that state law rights were clearly established. That failure is understandable, since there is none. As importantly, however, the district court found, as a matter of fact, that the defendants were justifiably "at least uncertain as to their full responsibilities under existing law, much less their obligations, under the United States Constitution."[9] (Pet. App. 66). Certainly, there is no reason for this Court to review that factual finding, especially since it is unquestionably correct.

Finally, even if the lower courts otherwise erred in finding that defendants were immune from liability, the

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[9]In so finding, the Court relied on defendants' own testimony that they believed they had obeyed state law and expert testimony that mental health professionals were generally confused concerning the requirements of state law. See note 6 supra.

district court opinion clearly supports an alternative basis for such immunity. In Youngberg v. Romeo , 457 U.S. 307 (1982), this Court held that where professional decision-makers, such as defendants in this case, violated constitutional rights, but did so because of budgetary constraints, they would be entitled to immunity from liability. In this case, the district court expressly found that

> the Commonwealth did not supply sufficient professional personnel and related support material to make Farview a mental hospital in fact as in name. It was more of a custodial facility and apparently was intended to be little more by the Legislature. Throughout the pertinent period for purposes of this lawsuit, it was overcrowded and understaffed.

(Pet. App. 72). Thus according to the district court, as a matter of fact, budgetary constraints substantially handicapped defendants' ability to carry out their duties and exercise

their professional judgment. Under Youngberg this finding alone entitled defendants to immunity from money damages. 457 U.S. at 323. Thus, as is noted above, the result below was both correct and unremarkable.[10] It, therefore, merits no review by this Court.

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10 There is an additional ground supporting a judgment for the defendants: defendants do not concede their liability. Rather, in Youngberg v. Romeo, supra, this Court held that in cases presenting a claim for treatment "the Constitution requires only that the Court's make certain that professional judgment in fact was exercised [by the defendants]." 457 U.S. at 322. Defendants believe they met that standard in making their decisions as to how to administer Farview. Neither the district court nor the Court of Appeals considered that claim.

B. The Question Of Malicious Intention Is Irrelevant To The Issue Of Qualified Immunity Under Harlow And, In Any Case, Was Correctly Decided By The Lower Courts.

Petitioners' second argument is that the district court improperly imposed upon him the burden of proving malicious intention as a prerequisite to recovery. That contention is both irrelevant and erroneous.

First, under this Court's decision in Harlow v. Fitzgerald, 457 U.S. 800 (1982), malicious intention is simply irrelevant. Rather, two questions govern defendants entitlement to qualified immunity. First, was the constitutional right violated clearly established at the time the violation took place? Second, if the preceding question is answered in the affirmative, did the defendants know, or should they have known, that their decision and subsequent actions would

have the effect of violating clearly established federal rights? 457 U.S. at 819. [11] In this case, the lower court answered both the preceding questions in the negative. Thus, defendants entitlement to immunity is clear. The question of malicious intention has no relevance to that issue.

In any case, petitioners' claim that the burden of proof was improperly allocated is without merit. This contention was addressed by the district court, which expressly denied having allocated to plaintiff the burden of proof on any element of good faith. (Pet. App. 93-94). There is no reason for this Court to review that holding.

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[11] In addition, under Youngberg, professional decision-makers are also entitled to immunity if their failure to exercise professional judgment was caused by budgetary constraints. See p. 15, supra.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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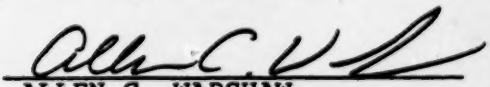
By: 

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